

1 (Call to Order of the Court at 3:30 p.m.)

2 DEPUTY CLERK: All rise. Her Honor, the Court,
3 the United States District Court for the District of
4 Alaska is now in session, the Honorable Sharon L.
5 Gleason presiding.

6 Please be seated.

7 THE COURT: Good afternoon. We're on record in
8 United States versus Kudryn. Mr. Alexander is here, and
9 who do you have with you, Mr. Alexander?

10 MR. ALEXANDER: Your Honor, this is Special
11 Agent Clinton Wight from IRS. He is the co-case agent
12 in this matter.

13 THE COURT: Good afternoon. Mr. Wells is here
14 with Mr. Kudryn. And it's the time set for sentencing.
15 Mr. Jedrosko is somewhere.

16 MR. JEDROSKO: I'm here, Your Honor.

17 THE COURT: There you are. All right. And
18 ready to proceed, Mr. Alexander?

19 MR. ALEXANDER: Yes, Your Honor.

20 THE COURT: Ready to proceed, Mr. Wells?

21 MR. WELLS: Yes, Your Honor.

22 THE COURT: Well, I have read through
23 everything that the parties have submitted, and read
24 through the presentence report. And first with regard
25 to those issues, maybe I'll hear from the parties first

1 with regard to the issues that were set out in the
2 guideline calculation.

3 In terms of the facts, there is no dispute,
4 other than their inclusion of some of the facts; is that
5 correct?

6 MR. WELLS: I think the general overall -- I
7 think generally there is not a dispute. I think that
8 there is a couple things we quibble about, but not
9 outright dispute, such as what was paid for the
10 furniture and what they were intending to do. But
11 overall, no, we don't quibble with the facts.

12 THE COURT: The plea agreement had a different
13 amount paid for the furniture. I believe it was \$1,050.

14 MR. WELLS: That's right. That's what we had
15 calculated, which is what we had relied upon.

16 THE COURT: And the -- as I recall the PSR says
17 \$700 to \$900.

18 MR. WELLS: Right, and that's why we would rely
19 upon what the plea agreement had said.

20 THE COURT: Mr. Alexander, what's the
21 Government's position on that?

22 MR. ALEXANDER: I agree with Mr. Wells. The
23 plea agreement should control here.

24 THE COURT: Which paragraph was that discussed?
25 Was it just on that enhancement or is it in the

1 preceding paragraphs, Mr. Jedrosko?

2 MR. JEDROSKO: Your Honor, I believe it's in
3 paragraph 25.

4 THE COURT: All right.

5 MR. WELLS: 22 and 25, Your Honor.

6 THE COURT: I see it in 22, and then isn't it
7 where the enhancement was computed also?

8 MR. WELLS: Right, that would be paragraph 44.

9 THE COURT: I see that, yes, 44. And so I'm
10 not sure it would change the math with regard to the
11 guideline range as computed by probation.

12 MR. ALEXANDER: I don't believe it does, Your
13 Honor, but I don't have any objection to substituting
14 the number from the plea agreement.

15 THE COURT: And it was \$1,050; is that correct?

16 MR. WELLS: Yes, Your Honor. That's what we
17 had negotiated. Well, not just negotiated, but that's
18 what we had calculated, which is why we had agreed upon
19 that with the Government.

20 THE COURT: Mr. Jedrosko, can you make that
21 change?

22 MR. JEDROSKO: Yes, Your Honor.

23 THE COURT: Other factual disputes, no?

24 MR. WELLS: No. There is no other factual
25 disputes.

1 THE COURT: And I guess on the -- it's kind of
2 an interesting plea agreement where you have this
3 admitting to the facts set out in the search warrant
4 affidavit, and my thought in reading all of this and
5 looking at the charging document, the plea agreement,
6 was to propose the following: To take the portions of
7 the offense conduct that relate to the Amazon issue and
8 move them to -- there is a portion that's after --
9 Offense Behavior Not Part of Relevant Conduct,
10 paragraphs 55 through 57.

11 MR. ALEXANDER: I don't have any objection to
12 that, Your Honor. I think that's an appropriate way to
13 acknowledge the distinction between exactly that. It's
14 not necessarily offense conduct in this matter, but
15 certainly relevant to the Court's consideration.

16 MR. WELLS: I would agree with that, because
17 that does -- that does outline -- that outlines where we
18 were in the plea agreement, but also specifically
19 identifies that's it's not relevant conduct, which is
20 one of our objections, because I understood that we
21 agreed to that, I understood that was part of the plea
22 agreement, I understood it would be in the presentence
23 report. My objection was to consider it relevant
24 conduct, and so that was one of my objections.

25 THE COURT: Let's see if we can agree then on

1 which paragraphs would apply. Would it be 6 through 21;
2 is that correct?

3 MR. ALEXANDER: Yes, Your Honor.

4 MR. WELLS: Yes.

5 THE COURT: Mr. Jedrosko, any disagreement with
6 that approach?

7 MR. JEDROSKO: No, Your Honor.

8 THE COURT: So that would resolve then the
9 issues related to the factual basis, correct, and then
10 we can turn to the applicability of the enhancements.

11 MR. WELLS: Okay.

12 THE COURT: I will find that all of the
13 statements of fact in the presentence report as modified
14 here are supported by a preponderance of reasonably
15 reliable evidence and I'll adopt them and make them
16 findings of fact for this proceeding. And I also do
17 intend and will now accept the terms of the parties'
18 plea agreement.

19 So why don't I hear first from Mr. Wells with
20 regard to these disagreements with the guideline
21 calculation by the probation officer. Although, the
22 Government agrees with the defense with regard to
23 deleting paragraph 47 on the Omelchuk identification, as
24 I read your memorandum. Mr. Alexander, is that correct?

25 MR. ALEXANDER: I'm sorry, Your Honor.

1 THE COURT: Take a moment. When I read your
2 sentencing memo earlier today, I thought there was
3 agreement, and if I'm wrong --

4 MR. ALEXANDER: No. Your Honor, I have to
5 confess I don't remember one way or the other.

6 THE COURT: You wrote this in May. No wonder.
7 I read it this morning, so I have an advantage there.

8 MR. WELLS: Part of the problem, Judge, is I
9 have been in trial for the past two months.

10 THE COURT: There you go. That's fine. Take a
11 moment. It's page four of the Government's sentencing
12 memorandum at Docket 93. Actually, begins in the
13 preceding page, but I read the Government there -- you
14 know, the confusion I will say is that you reference
15 paragraph 46, but the Omelchuk was paragraph 47.

16 Do you need to take a few minutes,
17 Mr. Alexander?

18 MR. ALEXANDER: No, Your Honor. I found the
19 place in my sentencing memorandum. No, as I stated
20 there, Your Honor, that's correct. Thank you for the
21 Court's patience. Just for the record, I wrote in my
22 sentencing memorandum that the latter specific offense
23 characteristic relating to false identification
24 documents as stated in paragraph 47, as the Court points
25 out perhaps should be 46, should not be adopted by the

1 Court because, although true, it relates to the Apple
2 scheme rather than the count of conviction related to
3 the sofa scheme.

4 THE COURT: Take a moment. I believe it's 47,
5 but there is agreement?

6 MR. ALEXANDER: That is what I put in my
7 sentencing memorandum, Your Honor.

8 THE COURT: I don't know why I have got 46 on
9 page --

10 MR. ALEXANDER: I wrote 47 at the top of page
11 four.

12 THE COURT: I'm looking at the middle of page
13 three. Anyway, that's fine. Oh, no, I'm looking -- I'm
14 on track. All right.

15 47 is deleted. Any question about that,
16 Mr. Jedrosko?

17 MR. JEDROSKO: No questions, Your Honor.

18 MR. ALEXANDER: Just to interrupt briefly, Your
19 Honor. I think it may be -- I did say "should not be
20 adopted by the Court," but that paragraph may be
21 relevant to put in that same section that we previously
22 discussed regarding relevant conduct that's not offense
23 conduct.

24 THE COURT: So what's your proposal?

25 MR. ALEXANDER: So --

1 THE COURT: It wouldn't factor into the
2 guidelines.

3 MR. ALEXANDER: No, and it should not factor
4 into the guidelines.

5 THE COURT: I think it's already covered in the
6 5 through 21. So I don't know if we need a guideline --
7 what's your proposal, Mr. Alexander? Let's hear it.

8 MR. ALEXANDER: Your Honor, we just discussed
9 moving paragraphs 5 through 21.

10 THE COURT: Right, to add to 55 through 57.

11 MR. ALEXANDER: And I believe that the court is
12 correct that that paragraph 47 is duplicative of the
13 information contained in paragraph 17. That's a long
14 way of saying that I don't oppose striking it
15 altogether.

16 THE COURT: What I can hear are the arguments
17 with regard to remaining enhancements, the 12-level and
18 the two-level for ten or more victims and the two-level
19 for whether a substantial part of the fraudulent scheme
20 was committed from outside the United States.

21 I would see it was -- I'm inclined to say that
22 the conduct at issue in the charge here before me was
23 not under 2B1.1(b)(10)(C), but it would in my mind, even
24 when viewed in isolation, at least it would be
25 interesting in the parties' arguments as to whether or

1 not the conduct with regard to the furniture had a
2 substantial part of it committed outside the United
3 States.

4 So I do recognize taking Amazon out of the
5 picture. Is there still a basis for saying a
6 substantial portion was committed outside the United
7 States? And so -- and the other question I had before I
8 hear from you both on the guideline was there is a
9 portion of the loss calculation that relates -- let me
10 see if I can find it.

11 That provides that in certain circumstances the
12 Court can look to -- it's on page 90. It says, "The
13 Court shall use the gain that resulted from the offense
14 as an alternative measure of loss only if there is a
15 loss but it reasonably cannot be determined."

16 And my question is whether or not that
17 particular application note should apply, so that's
18 application note 3(B) of 2B1.1.

19 So go ahead, Mr. Wells.

20 MR. WELLS: Thank you. Your Honor, let me
21 address the complicated scheme which deals with how much
22 is outside. Judge, I think that as far as the
23 complicated scheme, how much was related to outside the
24 United States, I think that had to do with the
25 manufacturer.

1 And what's relevant, what's driving this is
2 Mr. Kudryn's statements to support the sales, not
3 necessarily the manufacturer. If he had just said,
4 "This is Chinese furniture, made from Italian leather,"
5 there wouldn't be any issue. So if he had done the
6 exact same thing and just said that, we would not be
7 here.

8 So what does that say? It says that what's
9 driving this case is his statements, which were made in
10 the United States and were made through Craigslist,
11 which would then not be in the -- not be outside of the
12 United States. And I think that then takes it out of
13 the realm of a special skill or anything like that.
14 That's why I don't think that that applies because all
15 of his statements were made within the United States.

16 As far as the ten or more victims, this is an
17 odd case. And I'll talk about the valuation in just a
18 minute, but this sort of dovetails with it.

19 This isn't a typical fraud case. One of my
20 affidavits the woman wrote, and she was a Lieutenant
21 Colonel with the Air National Guard, she wrote, you
22 know, "I wanted leather furniture, I got leather
23 furniture. Fraud is I pay for leather furniture and I
24 get nothing."

25 And so you stop and say, okay, what is a victim

1 in this case. Well, there is two, I think -- I think
2 you got to separate "I'm not happy with what I paid for"
3 versus "I got something I didn't bargain for." Those
4 are two separate things. If you go to Nordstrom and you
5 buy a leather jacket and you're sitting there going, "I
6 really like this," and you walk out of the store and you
7 go, "Oh, I have got this," you reach over and the
8 shoulder all rips out, you're not happy with your
9 purchase. Why? Because you were defrauded? No,
10 because you don't like the quality.

11 So what the Government has said is -- and these
12 two really combine, I think, together. So it's not --
13 there is not an easy way to break this apart. So what
14 the Government has said is Mr. Kudryn made statements
15 that this furniture was made in Europe, made in Italy,
16 when it was actually made in China. That's true.

17 So the question then is how does that impact
18 this case, because in order for it to be -- what they
19 are talking about is what we used to call fraud by the
20 inducement, getting somebody to buy something that they
21 would not otherwise by.

22 And they haven't identified anybody that's done
23 that. They've identified people that have said, "You
24 know what, I didn't like his business practices, he
25 wouldn't let me use a credit card," he did this, that or

1 the other, but nobody has ever said, "You know what, if
2 I had learned that it was made in China, I wouldn't have
3 bought it." Nobody ever said, "You know what, if I
4 learned that he was just selling these piecemeal so that
5 he could cover shipping for some of this other stuff, I
6 wouldn't have bought it."

7 Instead what's happened is everybody has said,
8 "I wanted leather furniture, I paid for leather
9 furniture, I got leather furniture." We have
10 essentially two groups of victims. One is the
11 Government's agent, which got Mr. Kudryn to say, "Yes,
12 it's made in Europe." We have other people that are
13 unhappy with their purchases.

14 That I don't think -- I don't think those quite
15 -- I think for the Government to establish fraud, they
16 have got to -- they have to establish that people
17 essentially relied upon these fraudulent statements to
18 make a purchase rather than just they were subsequently
19 dissatisfied with their purchase.

20 And so we have included -- and I've got
21 actually another one if it would help the Court. We
22 have included several affidavits from, like, 13
23 different people that have all said, "You know what,
24 listen, I knew what I was getting and I got what I paid
25 for and I'm happy with it."

1 Now, the significance of that, Judge, is that
2 we now have some people that are dissatisfied, but they
3 are dissatisfied with what happened, not because they
4 didn't get what they paid for. And we have got some
5 people that are very satisfied. But we don't have
6 anybody that's come in and said, "You know what, I
7 didn't want anything from China. And if I had been told
8 it was from China, I wouldn't have purchased it." Or,
9 "I didn't want something -- Mr. Kudryn told me that this
10 was an overstock and if I had known how he was doing
11 this, I wouldn't have purchased it."

12 We don't have anything like that. We don't
13 have anybody that's identified as a victim that can tie
14 Mr. Kudryn's fraudulent statements to their conduct.
15 And so because -- so I think that, A, we've got a
16 problem identifying victims in that way; B, I think the
17 idea that everybody that purchased it is a victim is
18 wrong, because we have identified several people that
19 were happy with their purchases, and so -- and they got
20 what they paid for. They wanted leather furniture, they
21 got leather furniture.

22 And so to say then that everybody that
23 purchased it was a victim, I think is incorrect. And I
24 think if the Government wants to increase Mr. Kudryn's
25 punishment, they bear the burden of proof. And even

1 giving them everything, they have established six people
2 that they can say are victims.

3 Judge, they have got to show more than ten.
4 And when we have come in and shown that we have got
5 roughly double the number of people that are happy with
6 their purchase, then I think there is a legitimate
7 question how many people got what they wanted and are
8 like, "Hey, you know what, it's 2300 bucks for a leather
9 set of furniture off Craigslist, hey, I realize I'm not
10 dropping \$10,000 at Williams & Kay, this fits my needs,
11 does what I want, I'm happy."

12 We don't have any idea. The Government seized
13 Mr. Kudryn's computers, they seized his phones, they
14 seized his communications. I know many of these
15 payments were in cash, but, number one, Mr. Kudryn
16 reported them on his taxes. There is no information
17 that that didn't happen. They also had his phone
18 numbers. They could have gone back and said how many
19 people called this number from Alaska numbers, because
20 if he's running his business internationally, all right,
21 then why are people from Homer calling him, why are
22 people from Wasilla calling him.

23 And the Government could have done that. The
24 Government didn't do that. So number one, I think that
25 the way that we have set this up, we can show not

1 everybody is a victim. Number two, they had the
2 opportunity to go through and find if there were more
3 people, and they didn't. All they have established is
4 six people. And then number three, the people that they
5 have identified as victims are not people that came in
6 and said, "You know what, I didn't get what I paid for."
7 What they've said is, "I'm not happy with the quality of
8 what I paid for."

9 And that's a very big difference. And so
10 because of that, I don't think the Government has met
11 their burden of proof as far as the ten victims.

12 As far as the valuation, should the Court
13 include that other section? I think the answer is no,
14 because in this case, it isn't that the loss amount is
15 hard to figure, it's that we wind up with a really weird
16 case where there isn't a loss amount. Specifically,
17 there is no intended loss amount.

18 To have an intended loss amount, you would have
19 to have Mr. Kudryn sell something or wind up with more
20 than what he sent was and what's it's worth.

21 Now, worth is -- worth is a weird concept,
22 because worth is not absolute. Worth is what is the
23 highest bidder willing to pay for it, and that can vary.
24 And so in this case, what we have are furniture sets
25 that are priced -- and I included a comparison. If the

1 Court wants, I have got the person that did the
2 comparison.

3 THE COURT: That's fine.

4 MR. WELLS: I have got a comparison to show
5 that these were priced within the market range, even on
6 the low end of the market range, of furniture of this
7 type.

8 So what you would have to establish for any
9 sort of intended loss -- and that word intended is
10 important. You would have to establish that Mr. Kudryn
11 wanted somebody to pay more than what something was
12 worth. So you take a car and you say, "Oh, yes, this is
13 a Ferrari. Yes, it's expensive, but you know what, this
14 Ferrari was owned by Steve McQueen," and so now instead
15 of \$500,000, it's a million. What's your intended
16 loss? \$500,000. It's pretty easy.

17 But here, all of those furniture sets actually
18 cost more, and so the intended loss is, particularly
19 considering how Mr. Kudryn was trying to -- what he was
20 doing, the intended loss really doesn't exist in this
21 case. Because what Mr. Kudryn was doing was using these
22 to pay for his shipping, because the shipping container
23 to go from China to Seattle was \$2,000, but from China
24 to Anchorage was \$10,000.

25 And so what he would do is put in roughly ten

1 of these units and he would sell them, we agreed \$1,050
2 was the cost, he would sell them for about \$2,300. His
3 goal was to make sure that the furniture sales
4 underwrote the cost of the shipping. So all of the iPad
5 charging cords and cases and things like that, that
6 essentially their shipping had been paid for and it
7 enabled him in Alaska to compete with businesses in the
8 Lower 48.

9 The example, the thing that came to my mind
10 when I thought of this, I lived for several years in
11 Dillingham and every year during the fishing season a
12 lot of people would come out and they'd work the fishing
13 processing places. Well, what most people don't realize
14 is those fishing companies are owned by Japanese
15 conglomerates.

16 And the Japanese would send a quality inspector
17 over and what they really wanted were the fish eggs.
18 The fish eggs had to be just right. They got to get the
19 salinity right, they got to be cured right and all of
20 that. And a friend of mine who ran a bed and breakfast
21 had a 747 pilot who said, "When we fly those fish eggs
22 from Anchorage to Tokyo, it's one of the few times that
23 the cargo is worth more than the plane." What happens
24 is that the fish eggs pay for the cost of everything.

25 So when you see those cans of canned salmon,

1 those are all pure profit because the cost to process
2 them and can them and do all of that has already been
3 paid for by the eggs.

4 In the same way what Mr. Kudryn was trying to
5 do was to say, "I don't want to make a ton of money on
6 this furniture. I want enough that it pays essentially
7 for my time and expenses, but it pays my shipping so
8 that I can compete."

9 So when you have that, you say how is there any
10 real loss, because even if he -- the Government says,
11 "Oh, this is worth \$4,800." How much of that, Judge, is
12 puffery? How much of that is --

13 MR. ALEXANDER: We don't say --

14 THE COURT: I don't think anybody is saying
15 it's worth 48 -- well, I think Mr. Kudryn did at one
16 point.

17 MR. WELLS: There was some discussions about
18 that in the PSR. And so that was not used in one sense
19 as an intended loss. Rather, what Mr. Kudryn is trying
20 to do is to say, "Look, if you compare these sets -- my
21 sets of furniture to other sets of furniture that you're
22 going to find, you're going to find I'm in the ballpark,
23 actually, on the low end of the ballpark."

24 So his goal wasn't to sell somebody something
25 that they didn't get. Everybody, even the people that

1 aren't happy agreed, "I paid for leather furniture, I
2 got leather furniture." Maybe they weren't happy with
3 the quality, but they got that. So his intent was not
4 to get them to buy it at an inflated rate. His intent
5 was not to get them to buy it at a price that was
6 outside the market.

7 Nobody disagrees with that. Where we disagree
8 is what were the statements that he used to persuade
9 somebody to purchase it. And if he had said, "Hey,
10 look, this is Italian furniture made in Italy and
11 normally these furniture sets are \$10,000 and I'm
12 selling them for \$6,000, because you can compare them,"
13 you know, you might have -- we would be in a profoundly
14 different spot.

15 What he is doing here is covering his shipping
16 charges and putting them on the low end of the cost
17 comparison. There isn't an intended loss. He isn't
18 trying to make himself rich in one sense at the expense
19 of somebody else like saying something is what it isn't,
20 in the sense like this is Steve McQueen's Ferrari. What
21 he's doing is trying to get somebody to buy something
22 and they get what they pay for, that is, they buy
23 leather furniture, they get leather furniture.

24 In that respect, Judge, I disagree with the
25 intended loss calculation in the presentence report,

1 because, A, it presumes there is an attempt for loss,
2 but, B, the other thing that it does is it says, "Here
3 is \$300,000 that was spent," and it uses that
4 calculation as a substitute for intended loss. But
5 again, if I buy a house for \$200,000, the market goes up
6 50, I get an appraiser to give me a fake appraisal for
7 350, then, you know what, my intended loss is 100, it is
8 not 350.

9 And that's what the the Government is doing in
10 this case. They are ignoring that out of that 300, some
11 of that went to buy the furniture, some of that went to
12 pay for the shipping, some of that then went for all the
13 processing. They are ignoring that, and that whole cost
14 then becomes intended loss.

15 And I don't -- what we have got, Judge, is
16 fraud in the inducement, not necessarily a fraudulent
17 misrepresentation about the value of something. And
18 that's a profound distinction in this case and why there
19 isn't an intended loss.

20 I think that to the degree the Court wants to
21 look for a loss, I think that the restitution should not
22 be substituted, but I think there is now -- I think
23 there is five identified in the presentence report and
24 the Government has said there is one other person, there
25 is six people that have come forward and said, "You know

1 what, we did not get what we paid for, we're not happy,
2 we have agreed to \$500 in terms of restitution." And
3 part of that was because of the complexity of
4 determining restitution. Part of that was just the
5 recognition that this isn't a typical case in which,
6 "Hey, I sent somebody \$2,500 to get furniture and I got
7 nothing." It recognizes that they did get something,
8 maybe it wasn't the quality of what they wanted, but,
9 again, it's kind of odd because we got some people that
10 are happy and some people that aren't.

11 For that reason, Judge I think we really are in
12 a situation where there should not be an intended loss.
13 It's an odd situation and it's not that -- it's not that
14 the loss is hard to calculate, it's that given how
15 everything was done, Mr. Kudryn's intent was not for
16 there to be a loss.

17 I know it's weird, but there actually are --
18 that actually has happened a few times, and I think in
19 this case, this is an appropriate case to do that.
20 Certainly when you look at the markup, at \$1,050,
21 they're being sold for roughly \$2,300, if he's trying to
22 distribute \$10,000 of cost between ten items,
23 thereabouts, you're looking at roughly \$2,000 in costs
24 per unit, so that's how we arrived at the roughly \$200
25 to \$300 profit in each one that we listed and that

1 Mr. Kudryn put down on his taxes.

2 That's what we included in our sentencing memo.
3 But, again, the profit is not intended loss. The
4 intended loss has to be what did he intend to deprive
5 the people of by his false statements. And really what
6 it was is sort of overstepping his bounds in an effort
7 to get somebody to agree to a transaction as opposed to
8 getting them to actually lose money on a transaction.

9 And I think that's a different -- it's a subtle
10 distinction but it's an important distinction in this
11 case, and that's why we wrote that there really is not
12 an intended loss in this case.

13 THE COURT: Mr. Alexander, go ahead, please.

14 MR. ALEXANDER: Thank you, Your Honor. Judge,
15 I think it might be helpful to begin just by reiterating
16 the standard obviously that the Court knows as far as
17 determining the trustworthiness of information, factual
18 information presented in the PSR as far as making a
19 determination of about an offense characteristics.

20 My understanding is that the threshold here is
21 whether or not the Court finds it to be reasonably
22 reliable in terms of the information that's presented in
23 the PSR.

24 THE COURT: Do you agree that the clear and
25 convincing evidentiary standard would apply when it's a

1 12-level enhancement?

2 MR. ALEXANDER: I certainly wouldn't have any
3 objection to applying a higher and clearer convincing
4 evidence. I think we have got evidence beyond a
5 reasonable doubt and we would have been prepared to
6 prove such at trial should this have arisen in that
7 context.

8 Your Honor, as far as I could track Mr. Wells'
9 argument, at least in part it seemed to boil down to the
10 fact that Mr. Kudryn did not intend -- didn't act with
11 an intent to defraud. If that's an argument that's
12 being seriously pressed here, then we may be in a
13 different posture given the statement of facts that
14 Mr. Kudryn stipulated to for his change of plea, the
15 fact that the statement of facts does pretty
16 specifically detail the fraudulent mental state and the
17 fact that he acted with an intent to defraud in the
18 course of the sofa conspiracy.

19 And in discussing that conspiracy looking at
20 that statement of facts --

21 THE COURT: If you could hold on just a minute.
22 I've got it right here. Which page are you on?

23 MR. ALEXANDER: Docket 65, Your Honor. It
24 begins at the bottom of page four and continues to the
25 top of page eight.

1 So several things, Your Honor. As part of that
2 factual basis, as we have already discussed, Mr. Kudryn
3 stipulated to the truthfulness of the allegations, both
4 in the indictment and in the seizure warrant that we
5 discussed, isn't relevant conduct for the purposes of
6 this offense, but other conduct that has been included
7 in the PSR and the truthfulness has been stipulated to.

8 But I think it's important to stress as well
9 that probation has independently assessed and reviewed a
10 significant amount of the Government's evidence and
11 discovery in that matter in arriving at the loss
12 calculation that's ultimately reflected in the PSR. So
13 I do want to make a note that it's not -- wasn't just a
14 rote adoption of some arbitrary loss calculation that
15 was stipulated to in the plea agreement, but rather that
16 probation did their own independent assessment and
17 calculation on the basis of the information, not only in
18 the stipulated factual basis in the plea, but also in
19 the discovery as well.

20 Returning to that factual basis, Your Honor, as
21 we proceed through it, there is no dispute that
22 Mr. Kudryn, along with uncharged co-conspirators,
23 purchased at least \$300,000 worth of wholesale furniture
24 from the Duoxieyi sofa factory in China, and in part
25 based on preexisting import/export relationships that

1 Mr. Kudryn had in the area relevant to other business
2 ventures, including the Amazon/Apple case that resulted
3 in the forfeiture of the funds seized in that matter and
4 resolved as part of the global plea agreement in this
5 matter.

6 And it's similarly undisputed that Mr. Kudryn
7 advertised those sofa sets that he purchased in China
8 and had imported from China in the District of Alaska
9 using Craigslist.com and materially misled, and I'm just
10 reading from the stipulation of facts, "Materially
11 misled customers by representing the furniture purchased
12 in bulk and delivered to his commercial property in
13 Wasilla left, not just the country of origin, but also
14 the fact that they consistently misrepresented them as
15 leftover samples and that the furniture was being
16 offered at a discounted price.

17 So there is actually multiple materially
18 misleading statements of fact that were involved in the
19 bulk of these hundreds and hundreds and hundreds of
20 Craigslist postings that Mr. Kudryn placed between July,
21 the period of the conspiracy that's charged, July of
22 2014 and March of 2018.

23 That's when we get to the actual overt acts
24 that Mr. Kudryn agreed that he committed in the course
25 of this conspiracy. As we discussed earlier, I think

1 Mr. Wells was appropriate for us to recalculate based on
2 the bottom of page six of the plea agreement. And I
3 think this is a conservative and generous cost estimate
4 to Mr. Kudryn that each of the complete sets that he
5 purchased in China cost him approximately \$1,000, the
6 \$1,050 listed there, and that they were then shipped to
7 fill containers that were being returned to the United
8 States.

9 And this is maybe where Mr. Wells got this
10 \$4,800 figure, it's not that the United States isn't
11 asserting that these were worth \$4,800, quite the
12 contrary. As the Court pointed out and as Mr. Kudryn
13 has stipulated, it was Mr. Kudryn who represented to his
14 customers that each of these units was worth \$4,800.

15 And so it's not just the country of origin, but
16 it's also the material misrepresentation regarding the
17 valuation, which is exactly Mr. Wells' analogy or
18 example about the Ferrari, lying about the origin of the
19 Ferrari and saying that the Ferrari is worth a million
20 dollars when it's only worth \$500,000.

21 That's exactly what Mr. Kudryn did here in the
22 course of the conspiracy, again, acting as he stipulated
23 that he did with the material intent to defraud the
24 customers involved. That's not to say that there may be
25 some people, and I'm not necessarily disputing the

1 truthfulness of some of Mr. Wells' representation, that
2 there may be some individuals to whom Mr. Kudryn told
3 the truth or knew the truth of the matter through a
4 family relationship or friendship, knew that these were
5 sofas coming in from China.

6 But I think that's a far cry from arguing that
7 there aren't ten victims here. I think there is
8 certainly clear and convincing evidence before the Court
9 that there is at least ten victims here, not just in the
10 representative sample of victims who are actually named
11 in the discovery and then also included in the
12 presentence report undisputed, but also critically, Your
13 Honor, I think it's important to note that the
14 stipulations as well included the fact that there were
15 hundreds of postings, as is discussed, at least 477
16 postings between 2014 and 2018, made by Mr. Kudryn to
17 the Craigslist marketplace in order to sell these items
18 that included these material misrepresentations.

19 So, Your Honor, I would argue that on the basis
20 of the stipulated facts in the plea agreement at Docket
21 65, in addition to the very thorough review -- thorough
22 and independent review of the discovery that's provided
23 in the presentence report and the rationale that's
24 listed for that 12-level enhancement at paragraph 44 of
25 the presentence report discussing the specific offense

1 characteristics relevant to loss and assessing it
2 between the \$250,000 and \$550,000 threshold, that that
3 is correct.

4 I would argue as well, Your Honor, and the
5 Court noted this earlier, as far as the use note for
6 Section 2B1.1, use note 3(B), saying that the Court
7 shall use the gain that resulted from the offense as an
8 alternative measurement of loss only where it can
9 reasonably determine. I think there is actually a
10 fairly straightforward, and this is how probation has
11 calculated it as well, way of assessing both the gain
12 and the loss and that difference between the overall
13 amount that Mr. Kudryn spent on these items and then the
14 amount that he was advertising them for sale and
15 fraudulently, in furtherance of doing so in the course
16 of the conspiracy charged here, making those material
17 misrepresentations of fact, including what their retail
18 value was, the fact that he was consistently claiming
19 that they were worth \$4,800 retail, that he would sell
20 them for \$2,400 because they were seconds left over,
21 again, over and over and over again, as well the fact
22 that they were manufactured in Italy when obviously they
23 were -- he was in a position to know that they were
24 manufactured in China.

25 That's a very lengthy way of saying, Your

1 Honor, that the stipulated facts unless -- Mr. Wells'
2 argument could be interpreted one of two ways. It could
3 be interpreted as kind of arguing a reasonable argument
4 as to loss, which is the way I interpreted it. It could
5 also in certain ways be taken as a lack of acceptance of
6 responsibility and a fundamental dispute with the
7 statement of facts that were stipulated in the plea
8 agreement.

9 I'm not reading it that way, but at the end of
10 the day, I do think there is clear and convincing
11 evidence in the record, in the stipulation of fact and
12 in the summary of the facts that the Court can rely on
13 in the presentence report that Mr. Wells has agreed to
14 that the assessment in paragraph 44 discussing loss is
15 accurate.

16 THE COURT: All right. What about your
17 position, Mr. Alexander, with regard to the enhancement
18 on whether or not a substantial part of the fraudulent
19 scheme was committed from outside the United States?

20 MR. ALEXANDER: I think that's well taken as
21 well, Your Honor, for the following reason: This
22 scheme, the conspiracy -- the sofa conspiracy, much like
23 the Apple and Amazon conspiracy that's not part of the
24 offense conduct but is included and the truth has been
25 stipulated to, could not exist but for Mr. Kudryn's

1 business acumen and his relationships in China and the
2 actual sale of those items and importation by Mr. Kudryn
3 directly from China to here.

4 Mr. Kudryn wasn't buying these sofas in Seattle
5 and having them shipped up here and then lying and
6 saying, "Oh, no, they are made in Italy," when in fact
7 they were made in China. This was a direct
8 import/export relationship or direct import relationship
9 with the wholesaler itself, the factory in China.

10 So this is, I think, reasonably one of those
11 circumstances where a substantial part of the fraudulent
12 scheme was committed from outside of the United States
13 because it was that financial relationship that
14 Mr. Kudryn had with the actual supplier of the sofa
15 itself. You can envision a situation where Mr. Kudryn
16 bought these sofas wholesale in the United States from
17 somebody else -- and this did in fact occur at times
18 during the Apple scheme where Mr. Kudryn would buy gray
19 market Apple products or promotional Apple products from
20 somebody in the United States and then resell them.

21 And other times he would buy Apple products
22 from outside the United States, and that's where I think
23 that distinction would come into play.

24 Here we're in a unique position to know that
25 all of these sofa sets that are at issue in the count of

1 conviction, in the wire fraud conspiracy relating to the
2 sofa sales, all of those originated from outside the
3 United States.

4 THE COURT: Thank you. Briefly, anything
5 further on this topic?

6 MR. WELLS: Judge, I would just say there is
7 nothing fraudulent or illegal or untoward about the
8 manufacturer of the sofa sets. And so what was -- what
9 made this conduct illegal was what was said in the
10 United States. And so because of that, I think that
11 that's what should drive that.

12 And as far as the loss amount, I guess let's
13 say I sell Corvettes and somebody comes in and the
14 Corvette is there for \$65,000, and I say, "You know
15 what, if you get this Corvette, and I'd say this to some
16 middle-aged attorney, sorry, and I say, "If you get this
17 Corvette, you will be irresistible to women," and the
18 guy says, "Okay," and he buys the Corvette for \$65,000.
19 All right. What's the intended loss?

20 The guy is not pocketing any money in terms of
21 he sold it for more than the price should be. Okay.
22 What he's done is he has told the guy something to get
23 him to do that. So he's bought a Corvette. He's bought
24 a Corvette for the manufacturer's suggested retail
25 price. So you could say he hasn't been defrauded of any

1 money. He's been induced into the transaction
2 fraudulently.

3 That's why I say it's different, because what
4 we're talking about here is not statements about him
5 trying to persuade somebody to buy something at a price
6 that will defraud them in a sense that they are paying
7 too much for what they are getting. What he's doing and
8 what he's agreed to is he's made false statements to get
9 somebody to agree to the transaction.

10 And so that's why I say that it's a weird
11 situation where there is not an intended loss, because
12 if there was an intended loss, he's going to be jacking
13 the price way up and talking about all kinds of
14 different things. His whole point was cover the
15 shipping expenses.

16 And so I know it's a weird -- I know it's a
17 weird case, but it's a weird case, I guess.

18 THE COURT: Well, there you go. All right.
19 Thank you.

20 On these guideline issues, I have given it
21 considerable thought, and I appreciate the parties'
22 arguments. I tried to find case law, and I'm sure the
23 parties did too, but without success.

24 I do see that the determination of the amount
25 of loss here cannot reasonably be determined as to what

1 the loss was in buying this product as a Chinese
2 manufactured couch or set versus Italian manufactured in
3 the consumer's eyes, and since that loss can't
4 reasonably be determined under the methods that are
5 suggested in application note 3(C), I do find that gain
6 should be used that resulted from the offense as an
7 alternative measure in this unique case.

8 And in looking at what is the gain that
9 resulted, I have some difficulty with the math that is
10 advanced by the defense insofar as, if I understand it
11 correctly, it would -- these containers had a bunch of
12 iPads in them and furniture, and as I understand the
13 defense math, it would put all of the shipping costs on
14 the furniture, when in point of fact it was getting
15 those iPads across the ocean that was the real money
16 making issue going on.

17 I have considered the fact that that is part of
18 the facts before the Court that were agreed upon in
19 looking at the loss associated with the furniture. So I
20 don't see saying that furniture is the driver of the
21 cost of shipment as reasonable.

22 So what I have done is I have looked at the
23 \$1,050 that the parties agreed in the plea agreement was
24 Mr. Kudryn's cost for this furniture, and I have
25 somewhat -- looking at the \$2,400 -- or \$2,300 to \$2,400

1 sales price that was charged for these, and saying that
2 certainly some of the cost of the shipping should be
3 ascribed to the furniture, I do see that a minimum of
4 \$250,000 to constitute the gain that was received as a
5 result of these transactions to be a calculation that is
6 supported by clear and convincing evidence given the
7 totality of the evidence in the presentence report and
8 as derived from the plea agreement and the search
9 warrant affidavit. So I do find that that offense
10 characteristic enhancement is warranted.

11 On the topic of the number of victims, I do
12 see, and I look to the plea agreement, that Mr. Kudryn
13 admitted guilt to having made fraudulent statements, had
14 a scheme to defraud for the purposes of obtaining money
15 by false or fraudulent purposes, and that was the basis
16 for the plea agreement.

17 And even if there are individuals that at this
18 point feel that they are not -- they are happy with
19 their furniture purchase, there was clearly an intent to
20 use the electronic means to try to talk people into
21 buying furniture that was something other than what it
22 was purported to be and to state that the value of the
23 furniture was considerably more than the asking price.

24 So I do see in that context that the plea
25 agreement makes it clear that there were victims that

1 clearly exceeded ten in number that were the individuals
2 that were impacted by this scheme. And I think -- I
3 read, and I thought it was interesting, that individuals
4 on Craigslist sadly felt like, hey, if you're buying
5 something on Craigslist you can expect to get taken, and
6 that's why we have laws is to try to prevent that from
7 being the way that we engage in commerce in this day and
8 age with the internet out there for buying and selling
9 in that manner.

10 So in any event, I do see that there were ten
11 or more victims. That I would see by the preponderance
12 of the evidence standard would apply, because it's only
13 a two-level increase. And so the fact that the
14 Government hasn't brought forth ten people saying that
15 they felt that they were victims does not impact the
16 Court's determination that in point of fact there
17 clearly were ten or more victims of this particular
18 offense.

19 On the "was a substantial part of the
20 fraudulent scheme committed outside of the United
21 States," I also agree with the Government that that
22 enhancement is warranted because the use of the Duo
23 person or entity to purchase the furniture in China was
24 what made the whole scheme workable. Without the
25 Chinese furniture, there would have not been any wire

1 fraud that occurred with regard to that furniture, and
2 so taking that together with the component of the
3 affidavit that was agreed upon by the parties insofar as
4 it made it clear that the filling of the container to
5 cross the ocean was a key part that motivated this
6 particular crime with the Chinese furniture, I do see
7 that a substantial part of the fraudulent scheme was
8 committed outside the United States, albeit, there was a
9 substantial part also committed in the United States
10 insofar as the Craigslist was directed at Alaskan
11 consumers by and large.

12 So I do find overall then that the guideline as
13 calculated by the probation officer, with the exception
14 of paragraph 47, which we previously discussed, is an
15 appropriate guideline determination and I will adopt
16 that, which would be a resultant offense level of 20,
17 and a criminal history category of I. And that results
18 in a guideline range of 33 to 41 months; a term of
19 supervised release of 1 to 3 years; the fine would be
20 the same as previously recommended, \$15,000 to \$150,000
21 under the guidelines; and the restitution we can address
22 in the course of the parties' remarks, together with the
23 mandatory special assessment.

24 Any questions or clarification regarding the
25 Court's ruling on the guidelines, Mr. Alexander?

1 MR. ALEXANDER: No, Your Honor.

2 THE COURT: Mr. Wells, questions or
3 clarification?

4 MR. WELLS: I guess -- no, Your Honor.

5 THE COURT: I mean, I will readily acknowledge
6 a unique set of facts, but I endeavor to apply the
7 guidelines as best I could to that set.

8 So, Mr. Alexander, why don't I hear your
9 remarks under 3553(a).

10 MR. ALEXANDER: Yes, Your Honor. I do want to
11 point out, just in case anybody does want to make a
12 statement, that there are several, or I believe to be
13 several victims.

14 THE COURT: Why don't we do that next then.
15 That's fine.

16 MR. ALEXANDER: If that's okay with the Court.

17 THE COURT: That's fine. That's fine.

18 Good afternoon. If you can come forward.
19 There is a microphone right there. State your name.
20 I'm glad the lawyer spoke up that you wanted to come
21 here and speak today. So go right ahead.

22 MR. KLAWITTER: I'm happy to be here, Your
23 Honor. My name is Mike Klawitter. I live in Palmer,
24 Alaska. And I purchased furniture from Mr. Kudryn
25 there, a couch set, a loveseat set and an individual

1 chair set. And it was advertised on Craigslist and was
2 described in person by him that this was high quality
3 Italian leather furniture and apparently -- it's not
4 leather to begin with, so the product wasn't even
5 accurate in description.

6 THE COURT: What was it, in your understanding?

7 MR. KLAWITTER: Well, it was described and sold
8 as leather furniture, but it's really some kind of fake
9 vinyl surfacing on it. It wasn't even actual leather.
10 It was kind of funny, because I flipped the furniture
11 over and looked for any identification tags from
12 manufacturer, country of origin on any of the cushions
13 or any of the furniture themselves, and there was none.

14 So whatever identification tags that came with
15 that furniture, my guess is they were removed or not put
16 in place to begin with. I'm not sure.

17 Mr. Kudryn actually gave me at time of purchase
18 a little vial of cream to apply to leather to help
19 condition it and keep it clean. So I mean it was a
20 pretty good ploy describing the leather furniture. The
21 quality was poor. And then I paid over hundreds of
22 dollars for a broken arm that broke off. I have got a
23 secondary piece of furniture that's got the same
24 problem, and it's going to require several hundred
25 dollars if I opt to do that to fix it by a furniture

1 fix-it place.

2 That was a complete nightmare. I felt
3 defrauded by him on what he was selling. And I would
4 recommend maximum sentencing as you see in the
5 guidelines there just from my experience. I appreciate
6 the opportunity.

7 THE COURT: I appreciate your comments, sir.
8 Mr. Alexander, go ahead, please.

9 MR. ALEXANDER: Thank you, Your Honor.

10 The Court has heard extensive argument and a
11 number of hearings, or has presided over a number of
12 hearings in this matter and has had the benefit of a
13 very thorough and detailed presentence report, so I'm
14 not going to further belabor the facts.

15 I do think, as we considered on our end what an
16 appropriate recommendation would be, that this does
17 present a difficult situation for the Court. Like most
18 of the individuals who are criminal defendants who
19 appear before Your Honor, Mr. Kudryn -- nobody is making
20 the argument that Mr. Kudryn is a bad person. That's
21 obviously not a consideration before the Court.

22 But weighing against that, and the fact that
23 Mr. Kudryn obviously has the support of his family who
24 are here today, weighing against that I think that it's
25 clear from the record that Mr. Kudryn has used his

1 charisma, his position in the community, his obvious
2 business acumen, which if it's directed to a law abiding
3 way can no doubt be successful, but he used all of those
4 -- his natural talent, skills and aptitudes for the
5 purpose of kind of skirting the line and engaging in
6 criminal activity for the purposes of defrauding
7 individuals for his own profit, a profit that ultimately
8 ended up benefiting his family as well.

9 And so it's not unusual, particularly for
10 so-called white collar defendants to present to the
11 Court as particularly sympathetic in the way that other
12 types of criminal defendants don't necessarily have that
13 benefit when they appear before Your Honor.

14 And so I don't pretend to have an answer of how
15 many months of incarceration it will take to address the
16 3553(a) factors to deter Mr. Kudryn from continuing to
17 engage in this type of criminal activity, which
18 apparently has an irresistible appeal to him, given the
19 long running course of conduct that's before the Court
20 today, primarily obviously in discussion of the sofa
21 scheme, to a lesser extent it's appropriate for the
22 Court to consider as well the interrelationship between
23 the sofa scheme and the Apple scheme, particularly since
24 there is that stipulated forfeiture of over half a
25 million dollars of proceeds from the Apple scheme as

1 well.

2 I think the core of the argument here today
3 before Your Honor is that binary distinction between
4 Mr. Wells' recommendation for a probationary sentence
5 with no period of incarceration and the recommendation
6 of the United States Probation, which has been joined by
7 the United States, of still a below guideline sentence,
8 but a sentence that does contemplate some period of
9 incarceration. That's I think --

10 THE COURT: So you recommended 12 months, and I
11 assume no objection to 12 months and a day?

12 MR. ALEXANDER: That's correct, Your Honor.

13 THE COURT: Which gives good time credit.

14 MR. ALEXANDER: Yes.

15 THE COURT: All right. Thank you. I
16 appreciate your comments, Mr. Alexander.

17 Mr. Wells, go ahead, please.

18 MR. WELLS: Judge, I sit here and -- I stand by
19 my recommendation. Okay. I look at this and I say, you
20 know, this is ultimately a consumer protection issue.
21 If we were in -- I am not licensed in Tennessee anymore,
22 but I am licensed in Washington, licensed in California,
23 and I was licensed in Tennessee, and they have a
24 consumer protection division that would normally handle
25 this as a civil matter.

1 And this wound up here over disputes about
2 furniture. And I look at this, the Court's made a
3 ruling in terms of the gains, but, again, I think that
4 if one looks at the cost, if there is -- if there is
5 roughly -- first of all, I think that there is disputes
6 in this case about how effective those ads were, and the
7 presentence report says look at all of these ads, there
8 must be --

9 THE COURT: I understood your argument there
10 about resetting the ad.

11 MR. WELLS: Right. And particularly when one
12 looks at the expenses, I think that then pushes those
13 numbers down. And even if the Court halves and says,
14 okay, half of the cost of shipping goes to the
15 merchandise and half goes to the furniture, that then
16 means that approximately out of, what, off the top of my
17 head, a couple hundred sales, you got \$800, with a
18 couple hundred sales of \$800 profit, then you're looking
19 at that point at about \$160,000, I think, instead of
20 \$250,000 for the guideline loss.

21 And so I think in this case, Judge, you know,
22 with the exception of the Valley dairy case, all the
23 fraud cases that I have been in front of this Court
24 before generally involve two commas, if not more. And
25 here we have, I think, a small situation, and I'm

1 thinking what good does imprisonment do. Is
2 imprisonment going to give people back their money? I
3 think that's far more important. We have got a
4 restitution issue.

5 Is imprisonment going to deter other people? I
6 think that we're -- this is one of those cases that's on
7 the line in terms of what was said, but, again, there is
8 -- how much, Judge? There is that line between caveat,
9 and fraud, between puffery and fraud, and where does
10 that line exist? And that's a hard thing to say.

11 We have agreed that we have crossed that line
12 into fraud, but I don't think we have crossed that line
13 into the fraud very far, if that makes sense. In other
14 words, if this case had gone to trial, I think that I
15 could have looked at a jury with a straight face and
16 said this was puffery, and it means to inducement.

17 We obviously did not choose to go to trial.
18 Mr. Kudryn has pled guilty. He's accepted his
19 responsibility. We're not trying to avoid that. But I
20 stop and say, okay, the Government talks about the iPad,
21 and even the Government agrees the iPad situations were
22 gray market. What is significant I think about that is
23 Mr. Kudryn withdrew from that several years ago, so all
24 the iPad conduct he voluntarily stopped.

25 And there has been nothing about his current

1 business that's at all an issue. There has been no
2 allegations of any sort of fraud or problems or anything
3 like that. And even in this case, as I have
4 demonstrated, we have a number of people that purchased
5 the furniture and they are quite happy with it.

6 So how do you balance -- how do you balance
7 that? I can guarantee you that if Mr. Kudryn had been
8 selling leather furniture and nobody had gotten leather
9 furniture, we would have had a whole lot more people in
10 this courtroom saying, "You know what," and they would
11 be going, "I spent \$2,500 and I got nothing."

12 And so because of that, I think given these
13 unusual circumstances, I don't think prison is
14 necessary. I think some of that comes under the initial
15 one of the circumstances of the case and the history of
16 the offender.

17 The need to deter, first of all, I think that,
18 as I said, Mr. Kudryn has self-deterrence. He stopped
19 the iPad situation. Secondly, I think that he's learned
20 from this. He's been on pretrial services. He's done
21 really well on pretrial services. A number of courts
22 have recognized that as a really good indication. He's
23 been on pretrial services since August or September of
24 last year. He's been on pretrial services for roughly a
25 year and he's not had a problem.

1 Part of it was they agreed he could leave the
2 country and go to trade shows and come back. He has.
3 He has not ever fled the country. He's not ever said,
4 "You know what, I'm gone." He certainly has family, a
5 number of whom are here. That itself is unusual. This
6 Court knows probably 19 times out of 20 that when I'm
7 sitting here talking about my clients there is nobody
8 back there. And he's got good family.

9 He's got a good work history. He's got a good
10 company. He's got a company that's in Alaska that
11 employs Alaskans and that brings money into Alaska. I
12 think frankly, Judge, the consequences of being on
13 supervised release, I think the consequences of being a
14 felon and I think a fine are more than enough to satisfy
15 the 3553(a) factors.

16 And that's what I would encourage the Court in
17 this case, because of this case. Again, I think the
18 argument would be different if he was selling furniture
19 and just taking people's money. In that case, okay, I
20 can see that. But in this case, we got some people that
21 are unhappy, we got some people that are happy. At the
22 end of the day, everybody got leather furniture. The
23 Government hasn't said that there was anybody that came
24 in, paid the money and didn't get what they said.

25 So because of that, I think it is a much

1 different case, and I don't think that imprisonment is
2 necessary.

3 THE COURT: Thank you, Mr. Wells.

4 Mr. Kudryn, you have the opportunity to address
5 the Court. I would certainly be interested in anything
6 you wanted to say. If there is nothing, that's fine
7 too. You can stay right there.

8 THE DEFENDANT: Hello, Your Honor. I have had
9 very little to say during this process that has spanned
10 more than one year. I'm thankful that this right has
11 been made available to me.

12 I'm going to jump right into things without
13 wasting any time by stating a few points on my history.
14 I am the oldest of 12 children, which I am honored for
15 all of them to be here today except one. I am
16 overwhelmed to see everyone arriving from California,
17 Hawaii, Alaska, and even Germany.

18 I'm privileged to see my beautiful mother
19 sitting in the audience. Thank you, Mom, for coming. I
20 love you a lot.

21 I'm so happy to see my youngest sibling,
22 Violet. Thank you, sis. I'm so happy you flew up to
23 attend.

24 My beautiful wife of 14 years and four children
25 are also here. Thank you for courage, strength and

1 unwaivering support you have provided over the past
2 year.

3 I was born in 1985 in the former USSR, now
4 known as Ukraine. In '89, my father and mother legally
5 immigrated to the United States to become the first
6 Ukrainian immigrants to Walla Walla, Washington. I am
7 so thankful to America for extending this amazing
8 invitation more than 30 years ago.

9 I grew up in eastern Washington for ten years
10 of my life, and sometimes think what my life would be
11 like had my parents not immigrated to the USA. I
12 attended Liberty Christian School through the eighth
13 grade before the family moved to Alaska in 1999.

14 I homeschooled over my high school years, which
15 allowed me to work side jobs and fund my passions in
16 aviation. I graduated a year later and finished my
17 aviation training and became the youngest airline pilot
18 flying for a local company here in Anchorage. My
19 airline career spanned a period of seven years, which my
20 ambitions allowed me to hold the youngest hired pilot by
21 two independent airlines, which included flying a jet
22 for Continental Airlines Express at the age of 19.

23 My wife and I married in 2005 at the young age
24 of 20, and life took off from that point forward. While
25 flying in the airlines my entrepreneurial spirit awoke,

1 and I began experimenting in business to identify what
2 else I may have skills in. I have always loved sales.
3 I have had the gift of identifying problems and creating
4 solutions for them. This quickly sprung me forward in
5 my entrepreneurial adventures.

6 Fast-forward to 2010. I no longer was able to
7 run my business and fly passengers for a living at the
8 same time. I had to pick one and decided to let my
9 entrepreneurial passions take lead.

10 I'm the president of a company called Crave.
11 Crave manufactures electronic devices and accessories
12 for your daily devices. To name a few, we manufacture
13 products such as mobile phone cases, portable battery
14 chargers, speakers, ear phones, cables, glass protectors
15 and several others.

16 I started the business with my brother, which
17 was a result of the experience gained in distributing
18 many different products in my early twenties. The
19 experience gained working with many different products
20 helped me identify areas that were not addressed by the
21 market.

22 As a result, Crave started to manufacture our
23 own products. By providing solutions to many areas that
24 are ignored in the industry, we have built a highly
25 reputable brand that at this time operates across the

1 U.S., Canada, and ten other countries. We are highly
2 demanded for a few reasons. We provide the American
3 standard and experience with meticulous attention to
4 details in a space occupied by foreign companies of
5 mostly one country who rarely deliver what the western
6 consumers appreciate in our daily products.

7 We have exceeded more than one million
8 customers in Crave and are quickly approaching the two
9 million mark. One of the greatest areas I am proud of
10 is our products accounts list, which includes my own
11 Government. It is very ironic, but this does include
12 the Department of Justice, which I am standing in at
13 this moment; the United States Marshal Service, behind
14 that door; the United States Federal Deposit Insurance
15 Corporation; the Department of Transportation; state
16 governments; school districts; and list goes on,
17 covering many governmental agencies, business entities,
18 and, of course, a huge amount of independent users.

19 One very important principle I have been taught
20 by my late father was to always do the right thing. I
21 hold dear the life principles he thought me, which are
22 faith, family and country, in that order.

23 We were one of those families that prayed grace
24 over every meal and lived our lives closely connected to
25 our faith. My father is my best example of these

1 principles. He was given the opportunity to immigrate
2 to the United States and worked hard to build the
3 American white-picket-fence life that America is so
4 famous for. 26 years of hard work, which included ten
5 years in Nelson Irrigation Corporation in Walla Walla,
6 Washington; 16 years in the City of Palmer at the Alaska
7 State Troopers facility.

8 With his dream retirement home built in Kona,
9 Hawaii, he was excited to move on into his golden years
10 and enjoy the fruits of his labor. Sadly his life was
11 cut short one and a half months before his retirement at
12 the age of 57 by an intoxicated man of less than
13 sterling character who pulled out into the oncoming
14 traffic lane January 1, 2016.

15 Fast-forward, it's been three and a half years,
16 we as a family carry on that baton where my father left
17 off. He would not expect anything less of us than to
18 pick up where he left off.

19 Just over a year ago, I was charged on a count
20 of wire fraud for the sales of sofas on Craigslist. The
21 charge came to me highly unexpected. I have always been
22 taught to respect authority and teach my children the
23 same thing.

24 The situation was highly challenging and
25 alarming. It took some time to regain clarity of

1 thought and figure out what to do next. Nonetheless, I
2 approached the issue with as much hands-on attitude as I
3 do any regular challenge in my entrepreneurial career.

4 I analyzed the issues presented to me and
5 strongly agreed that it is highly unacceptable to engage
6 in the conduct the Government presented. In my business
7 we have a metric called feedback and customer reviews.
8 It is a very simple way to see how our business is run
9 and managed by reading what many thousands of customers
10 write. This is publicly available information.

11 I must make note that I never considered
12 furniture a business of mine. My day-to-day activity is
13 running my company. Furniture was a means to fill a
14 void space in containers from the factory in China to
15 our U.S. warehouse. The only reason I ever agreed to
16 engage in the hassle of bringing sofa sets was due to
17 the location we are based, Alaska.

18 It costs \$2,000 to ship a container to Seattle,
19 yet more than \$10,000 to Alaska. There is no way to
20 cover that gap unless some sort of miscellaneous product
21 could be offered to the public that provided value
22 versus what could be bought in the local retailers. I
23 identified areas where cost could be significantly
24 lowered by providing the consumers what consumers wanted
25 for much less.

1 The sofa sets I sold appraised at \$3,199. Most
2 will find that \$2,300 is a bargain for a three-piece
3 leather sofa set. Furniture was that niche product for
4 me with just barely enough to demand to sell them
5 between shipments.

6 With a couple of sales a month, it was possible
7 to offset the highly inflated shipping costs of being
8 based in Alaska. The sales would be quite sporadic
9 without much rhyme or rhythm. My day-to-day activities
10 are running my business, Crave.

11 Normally, a Craigslist ad would result in a
12 call, e-mail or text asking to look at the set I had
13 posted. I normally advise that they are in a spare room
14 of my office and I am in the office from 8:00 until the
15 end of the day, which oftentimes extended into the
16 night. The caller would arrive through the day, which
17 meant me breaking up daily responsibilities, running to
18 the spare office to show the set.

19 Oftentimes, I would be in the middle of a
20 transaction with a customer selling Crave products, on
21 calls with factories, laboratory distributors, buyers,
22 agents, et cetera. I put them on hold, run next door,
23 answer the questions presented. The party would touch,
24 feel and sit on the set to make their decision.

25 The Government charge cites several bullet

1 points that brought me great concern. They required a
2 hands-on approach to address them. Up to that point I
3 never received a single complaint in nearly five years
4 of sofa sales. I didn't really know how to address the
5 Government's charge when buyers appeared to be happy,
6 with some coming back to buy multiple units.

7 With more than 1 million products sold by my
8 business, if there is ever a problem, customers are very
9 vocal in this digital age and we resolve them to the
10 customer's satisfaction as quickly as possible. Keeping
11 customers happy is a very basic principle of succeeding
12 in business. This is why they come back to buy from us
13 over and over.

14 The best way I could deal with the issue was to
15 locate the people who made purchases of the sofa sets
16 and ask them what I told them and what was their
17 experience. This was an immense challenge for me
18 because I did not have the names, phone numbers of
19 buyers. I simply did not consider it important to save
20 this information considering the sale was via classified
21 ad on Craigslist.

22 To me, this was no different than selling
23 something at a yard sale, never remembering the name of
24 the buyer. Not saving customer names and numbers was a
25 tremendous mistake. It took months to pull data from

1 phones and phone logs dating as far back as I could get
2 my hands on. My cell phone was seized and not returned
3 until September 2018.

4 Of approximately 100 to 110 sales I made over
5 five years, I could locate only 17 people. I met with
6 every single one of them to ask whether or not they
7 experienced the bullet points in the charge. Several
8 people stated they lacked clarity on several points,
9 such as the Italian leather point. To some this meant
10 made in Italy instead of what it meant to me, the
11 leather material being Italian leather.

12 Some stated they didn't fully understand nor
13 cared what it was made of. Most stated the deal was
14 simply too good to pass up compared to local retailers,
15 which almost everyone had compared to. The product was
16 presented in person and each person assessed if the
17 furniture was what they wanted.

18 Out of 17 people I could locate, 13 of them
19 gave me affidavits voicing their satisfaction. One
20 party stated they did not feel comfortable writing an
21 affidavit due to the Government press release casting
22 doubt if the set was made in Italy versus Italian
23 leather. One party stated they had no time and asked me
24 to pay them to write an affidavit, which I stated would
25 not be possible. One party shared one of their personal

1 life stories with me involving their own challenges that
2 left them no desire to participate in any affidavit.
3 This particular party made multiple purchases, a total
4 of three sets from me, and are immensely happy with me.

5 One party went through a detailed interview
6 with me voicing their satisfaction of the set purchased,
7 drafted an affidavit; yet upon me sharing my love of
8 America, my entrepreneurial passions, quickly decided
9 they were no longer interested in providing an affidavit
10 on political grounds.

11 Your Honor, this brought me to several
12 conclusions. I'm almost done here. In hindsight, I
13 should have listened to questions more attentively and
14 provided clearer answers. My answers left some
15 believing the furniture was made in Italy versus made
16 using Italian leather material.

17 My statement on shipping made some believe the
18 goods shipped from the Lower 48 instead of from China
19 via the Lower 48.

20 My goods valuation of \$4,800 per set also known
21 as retail pricing, MSRP, or original price, was
22 translated as defrauding Alaskans. The appraisal
23 completed in the summer of '18 required obtaining
24 quotations from the local furniture stores. A quote
25 from Sadler's Furniture showed an original price of

1 \$3,979, which is discounted down to \$2,279. Another set
2 priced using original price of \$7,477 was discounted to
3 \$4,079. This pricing model is standard practice in the
4 retail industry, not limited to just furniture. The
5 same model is found in car sales, equipment sales, phone
6 sales and many other segments.

7 Finally, the statement of why I owned the
8 furniture versus my comment stating they were extras or
9 seconds, I should have stated that I purchased the
10 furniture to offset shipping costs to my business
11 merchandise. Unfortunately, I didn't know that was
12 valuable information to the consumer.

13 I'm thankful to the 17 people who had taken
14 time to speak in great detail and answer questions about
15 this matter. Every business that I operate 100 percent
16 depends on satisfied customers. This has been the part
17 that wrecks me to this day. Even one customer who is
18 unsatisfied with any of my products keeps me up at
19 night. I go to incredible lengths to under-promise and
20 over-deliver in every area of my businesses.

21 Sadly, I did not provide attention to detail in
22 these furniture Craigslist sales, and, in hindsight,
23 would have avoided this mess had I paid attention,
24 didn't multitask, and, as a result, answered questions
25 accurately.

1 I understand per the Government's sentencing
2 report there are several people who are unhappy with
3 their purchase. I am sincerely sorry for the misleading
4 information. What taking responsibility in this case
5 means to me is not just a sincere apology, but
6 reimbursing you for the inaccurate statements I made.

7 If you are present here today, I am terribly
8 sorry for providing you inaccurate information. There
9 is no excuse for that, and I'm more than happy to refund
10 the \$500 at any time. Please see me at your convenience
11 to collect the funds.

12 Assuming the Government buyer is one of the
13 several listed people, I am happy to reimburse you the
14 full \$2,300 for your purchase if you would like to
15 return the set you bought while filming me.

16 Your Honor, Mr. Alexander, thank you for
17 returning my travel privileges last September, removing
18 me from the GPS monitor and many flexibilities provided
19 in allowing me to run my businesses while dealing with
20 this difficult situation.

21 It has been a highly troublesome year. I don't
22 say these words lightly. Thank you.

23 Having read the sentencing reports leaves me in
24 a troubled state of mind. The overwhelming majority of
25 the reports focus on areas that are outside the charge

1 made against me. Those areas have no connection with
2 furniture. It doesn't require many words to describe
3 the actual charge against me and why I'm standing here
4 today.

5 Very little effort was put forth to present
6 accurate data regarding quantities of furniture sold,
7 their true value, quantity of customers, and, most
8 importantly, attributing the loss amount on furniture
9 using gross revenue numbers. Very little effort is
10 required to visit a local furniture store to identify
11 furniture pricing.

12 By visiting the local furniture store, it
13 becomes abundantly clear that my furniture was sold
14 below market value causing no loss. This furniture was
15 appraised at \$3,199 per set. I sold them at \$2,300 per
16 set, which leaves a \$900 value gained to the buyer.

17 I have learned a tremendous amount from this
18 case. Buying and selling products is a privilege in
19 this country that cannot be taken lightly no matter what
20 avenue the sales take place on. A Craigslist sale
21 requires the same attention to detail that a business
22 requires. It make no difference how small or how good
23 of a deal it may be.

24 I clearly am unable to perform well when my
25 attention is spread over multiple directions at one

1 given time. This is obvious by the folks unhappy with
2 their purchases. Again, my sincere apologies for this.

3 The life truth that says you can't be old and
4 wise about being young and stupid has a very defining
5 meaning to me. I believe I have graduated out of the
6 young and stupid phase in my life and looking forward to
7 the old and wise ahead.

8 While this case casts a tremendous shadow on my
9 life that I have to live with, I hope to overcome and
10 use my experience to bring attention to fellow
11 entrepreneurs of matters easily missed that bring
12 immense challenges that never go into the
13 entrepreneurial risk formula many of us have before
14 launching a small business.

15 My world view has fundamentally changed by this
16 case. I hope those hurt can recover quickly and that my
17 sincere apology is accepted.

18 Thank you.

19 THE COURT: Thank you. I'm going to take about
20 ten minutes here, organize my thoughts, and then we'll
21 be back on record. We'll go off record briefly.

22 DEPUTY CLERK: All rise. This court stands in
23 recess for ten minutes.

24 (Recessed from 4:51 p.m. to 5:02 p.m.)

25 DEPUTY CLERK: All rise. Her Honor, the Court,

1 the United States District Court is again in session.

2 THE COURT: Please be seated, everyone.

3 In determining a sentence, a Court is to impose
4 a sentence that's sufficient but not greater than
5 necessary to meet each of the purposes set out in
6 federal law.

7 And I have looked first at the nature and
8 circumstances of this offense. And as set out in the
9 plea agreement, Mr. Kudryn acknowledged his
10 responsibility for the fraudulent conduct with regard to
11 the furniture. And I understood his perspective that
12 perhaps the furniture wasn't -- it was worth more than
13 the \$2,400 it was sold at, and, hence, although I
14 clearly heard Mr. Kudryn acknowledge he made statements
15 that were not accurate, that viewed in isolation, this
16 furniture series of transactions, if I were looking at
17 that in isolation in terms of the nature of the offense,
18 it is not as serious as other types of mail fraud that
19 has divested people of lots of money and/or goods that
20 has come before the Court.

21 And yet I can't, based on the record here, look
22 at this series of sofa transactions in isolation. And
23 as part of the plea agreement, there was an application
24 for a warrant that the parties, Mr. Kudryn, acknowledged
25 the truth of the statements in there too. And it's

1 clear that from looking at that 38-page document that
2 these furniture fraud transactions is not a single
3 incident in Mr. Kudryn's business career.

4 As detailed in the presentence report -- I'm
5 sorry, in the search warrant that the parties have
6 agreed to there was in Mr. Kudryn's background back in
7 2010 the \$300,000 in damages he paid to Monster with
8 regard to the Dr. Dre headphones.

9 And as Mr. Wells pointed out, many of these
10 types of fraud cases are false and misleading
11 advertising and are I believe appropriately addressed
12 through civil enforcement proceedings, but that clearly
13 did not result in Mr. Kudryn abstaining or giving up
14 this type of fraudulent conduct in future transactions.

15 MR. WELLS: Judge, I believe that's \$30,000,
16 not \$300,000.

17 THE COURT: Paragraph nine of Docket 66-1, page
18 five states \$300,000 in damages, so that is what I would
19 be relying on.

20 MR. WELLS: Very well.

21 THE COURT: If there is a motion to correct
22 that in the record, that can be made. I'm reading
23 paragraph nine, Docket 66-1, page five, which states
24 that Dmitry Kudryn and Wireovia from trade in Monster
25 Products were ordered by the U.S. Central District of

1 California to pay \$300,000 in damages to Monster.

2 And I have likewise looked at the conduct where
3 Mr. Kudryn then purchased fake Chinese national
4 identification cards through business contacts and used
5 those fake identifications to set up ten or more Amazon
6 seller accounts throughout several European countries.
7 And there again, Mr. Kudryn has acknowledged that that
8 was conduct that he has engaged in.

9 There was also Monster, it indicates in 2011,
10 perhaps this was what you were referring to on page six
11 of Docket 66-1, Mr. Kudryn was sued again by Monster for
12 selling counterfeit Beats by Dr. Dre, headphone sets,
13 and settled for \$50,000 U.S. dollars, so that's also in
14 the search warrant affidavit that the Court has relied
15 on.

16 Like I say, I'm not looking at this particular
17 conduct here, which is before the Court, for sentencing,
18 in isolation. And certainly while it's very commendable
19 that Mr. Kudryn has a criminal history of zero points,
20 no criminal history involvement in the past, there is
21 clearly a history of fraudulent misconduct in connection
22 with business dealings in his history.

23 I have considered the need for a sentence to
24 reflect the seriousness of the offense, promote respect
25 for the law and provide just punishment for the offense.

1 And I do see that, and many people have written about
2 this, that people that are selling small amounts of
3 drugs, and certainly both counsel have been in court
4 with me, \$2,000 to \$5,000 and five-year mandatory
5 minimum is what Congress says, and here we have a large
6 scale fraud being perpetrated and we're not looking at a
7 mandatory minimum, but to indicate that incarceration is
8 not warranted given the history of fraudulent conduct in
9 the business dealings of Mr. Kudryn, in this Court's
10 view, would not be meeting the obligation of the Court
11 to provide just punishment for this type of offense.

12 I have considered the need to deter others, and
13 certainly I do see that a factor here that is perhaps
14 more likely to accord general deterrence in what is
15 called white collar crime as opposed to people that are
16 addicted committing crimes or bank robberies without
17 really acting on any kind of planning. Here there was
18 several years of planning and activity by Mr. Kudryn in
19 engaging in this conduct.

20 I do see that there is a need to protect the
21 public from further crimes of the defendant. I didn't
22 really hear from Mr. Kudryn today how he plans to go
23 forward to ensure that his conduct remains within the
24 confines of the law. And clearly Mr. Kudryn is a very
25 successful business person and a person that can be of

1 great benefit to our society, but the Court is concerned
2 as to the need to protect the public from further
3 fraudulent activity by Mr. Kudryn, although I certainly
4 heard what appeared to be a heartfelt apology to the
5 individuals that were victims of this particular crime.

6 It's not a factor in this case for educational
7 or vocational training, which is sometimes an important
8 consideration. I have considered the guidelines here.
9 And in looking at the guidelines, which no party is
10 here, or probation as well, is not advocating for, and I
11 do see that that is warranted, that a guideline
12 calculation is not appropriate in the case. And in part
13 that relates to this complication with the intended loss
14 that it was -- in the Court's view, the guidelines
15 didn't really fit the nature of this case, so I have not
16 relied on the guidelines here in determining an
17 appropriate sentence other than to make that initial
18 guideline computation.

19 There is a need to avoid unwarranted sentencing
20 disparities among defendants with similar records who
21 have been found guilty of similar conduct. I know when
22 I had cases involving people that cheated on their
23 tobacco taxes and the Government came in and said
24 everybody that was involved in this \$2 million scheme,
25 and some only a couple hundred thousand, should get

1 probation and walk. And I said that is wrong. That is
2 wrong as a society that we say that you can steal on
3 paper and not in a violent way, you can steal and then
4 just get a slap on the hand, recognizing a felony
5 conviction is not a slap, it's a serious imposition, but
6 I did impose sentences of imprisonment in that case.

7 And in the Court's view this is a similar,
8 albeit different set of facts, but does warrant that
9 there be a term of imprisonment imposed.

10 It is for those reasons that, pursuant to the
11 factors that are set out in 18 U.S.C. 3553(a), it is the
12 judgment of the Court that the defendant, Dmitry Kudryn,
13 is hereby committed to the custody of the Bureau of
14 Prisons to be imprisoned for a term of 12 months and
15 1 day. The reason I am doing the extra day above the
16 recommendation of both probation and the Government is
17 so as to accord Mr. Kudryn an opportunity to serve in
18 fact less time because the good time credit accrues only
19 when a sentence is over 12 months.

20 Upon release from imprisonment, the defendant
21 will be placed on supervised release for a term of three
22 years. Within 72 hours of release from custody of the
23 Bureau of Prisons, the defendant shall report in person
24 to the probation office in the district to which the
25 defendant is released. While on supervised release, the

1 defendant shall not commit another federal, state or
2 local crime, shall not possess a firearm or illegal
3 controlled substance, and shall comply with the
4 collection of a DNA sample and the standard and special
5 conditions to be included in the Court's judgment.

6 And there were five proposed conditions by
7 probation at Docket 80 at pages three through four.
8 Mr. Alexander, any changes that you would propose?

9 MR. ALEXANDER: Your Honor, if I may have one
10 moment.

11 THE COURT: Certainly. It's Docket 80 at three
12 through four.

13 MR. ALEXANDER: I'm sorry, Your Honor. Three
14 through four on mine is the charge and conviction.

15 THE COURT: I'm looking at Docket 80, which is
16 the sentencing recommendation.

17 MR. ALEXANDER: Thank you, Your Honor.

18 THE COURT: I may have misspoken, but Docket 80
19 pages three through four.

20 MR. ALEXANDER: Your Honor, I'm just taking a
21 moment to share with Special Agent Wight, the case
22 agent.

23 THE COURT: Sure, go ahead.

24 MR. ALEXANDER: Thank you, Your Honor. No
25 corrections.

1 THE COURT: Mr. Wells, any changes you would
2 propose to those five conditions?

3 MR. WELLS: No, Your Honor. I'm trying to
4 think of a fraud case or a case like this that has not
5 included those.

6 THE COURT: Those are pretty standard.

7 MR. WELLS: In these types of cases, they are
8 pretty standard so I don't have any legal grounds to
9 object.

10 THE COURT: I will suspend the drug testing
11 requirement based on the recommendation of the probation
12 officer because I do find a low risk of future substance
13 abuse.

14 I do find that Mr. Kudryn has the ability to
15 pay a fine. A fine of \$150,000, which is the high end
16 of the guidelines, was recommended by the probation
17 officer. The Court will impose a fine of \$100,000. The
18 reason I'm doing less is because I considered, first of
19 all, Mr. Kudryn's willingness to do restitution. There
20 will be the restitution that will be ordered here.

21 There is the forfeiture that occurred as part
22 of the plea agreement in the case, and also the
23 magnitude of the offense based on the Court's intended
24 loss finding warrants a fine in that amount.

25 I do find the restitution that will be as

1 requested in the presentence report for the three
2 individuals listed there. There was reference to
3 additional, I believe, at this point.

4 MR. ALEXANDER: Your Honor, there are five
5 total who have made a request.

6 THE COURT: So if you could provide that
7 information to the courtroom deputy. And then likewise
8 there is the mandatory special assessment. And that
9 will be the Court's order.

10 And anything further before I address appeal
11 rights, Mr. Alexander?

12 MR. ALEXANDER: No, Your Honor.

13 THE COURT: There is a motion to dismiss, is
14 there not?

15 MR. ALEXANDER: I think there is just the sole
16 count.

17 THE COURT: All right. And Mr. Wells, anything
18 further before I address --

19 MR. WELLS: Yes, Judge, there are three
20 matters. Number one, I talked to Mr. Jedrosko.
21 Probation is still in possession of an expired passport
22 of Mr. Kudryn's and they would like explicit permission
23 to return that to him.

24 MR. JEDROSKO: Your Honor, I did talk to
25 defense counsel. Given the Court's sentence imposed

1 though, at this point, we would not want to return the
2 passport.

3 THE COURT: That's fine. And then voluntary
4 surrender I do want to address.

5 MR. WELLS: I was going to ask for voluntary
6 surrender. I was going to ask if the Court could make a
7 recommendation for Sheridan because I know they have a
8 minimum security and it's the closest.

9 Mr. Kudryn has been on some unique pretrial
10 release conditions that allowed him, with notification
11 to his probation officer, to travel outside the country
12 to attend trade shows for his business.

13 When he's going to be released, he will still
14 be working for his business. I would ask if he could
15 still maintain that, particularly since he's done really
16 well on pretrial release with that condition in place.

17 THE COURT: Mr. Jedrosko, what's your
18 recommendation on that?

19 MR. JEDROSKO: Your Honor, he has done very
20 well. Given that he's now been sentenced to a term of
21 imprisonment, we would request that he turn over his
22 passport to us and his travel be restricted to Alaska
23 just out of an abundance of caution.

24 THE COURT: Until going to Sheridan?

25 MR. JEDROSKO: Yes, until such time as he

1 self-surrenders.

2 THE COURT: The self-surrender would be at
3 Sheridan, I assume, not here.

4 MR. WELLS: Right. I should make plain, I'm
5 thinking of when he is released from custody and on
6 supervised release.

7 THE COURT: On supervised release, able to
8 travel?

9 MR. JEDROSKO: It's unusual, Your Honor.

10 THE COURT: Let's do the following: So the
11 request is for Sheridan, it's for voluntary surrender,
12 and it's for the ability to continue to travel.

13 MR. WELLS: That would be while he's on
14 supervised release.

15 THE COURT: Not for now?

16 MR. WELLS: Not for now. Typically, my
17 understanding with supervised release is that it takes
18 roughly three to six, three to eight weeks for them to
19 get everything done.

20 THE COURT: To designate?

21 MR. WELLS: I imagine that would happen fairly
22 quickly anyway.

23 THE COURT: Mr. Alexander, what's the
24 Government's position on each of these topics? No
25 objection to Sheridan I assume?

1 MR. ALEXANDER: Of course not, Your Honor. I
2 have no objection to self-surrender on the condition
3 that Mr. Jedrosko has described, which would be the
4 surrender of any passports that Mr. Kudryn has. I don't
5 believe that Mr. Kudryn currently has a passport for the
6 Ukraine.

7 THE COURT: So surrender all passports by close
8 of business tomorrow. Voluntary surrender. What do you
9 recommend in terms of the timing, Mr. Jedrosko? I can
10 do within one week of designation or --

11 MR. JEDROSKO: Your Honor, if he
12 self-surrenders to the institution, Bureau of Prisons
13 will pick the date that works for them and then he'll
14 just have to surrender on the date that they pick.

15 THE COURT: Self-surrender on the date
16 designated by BOP?

17 MR. JEDROSKO: As notified by our office, yes,
18 Your Honor.

19 THE COURT: Any objection to that approach?

20 MR. WELLS: No, Your Honor. That's been
21 typically -- it's either that or surrender to the
22 marshals here, so we appreciate being able to surrender
23 to Sheridan.

24 THE COURT: So no travel outside Alaska at this
25 time. With regard to supervised release, what I will

1 provide is no travel outside of the country unless
2 pre-approved by the probation officer, but I will say
3 here on the record today, and I can be reminded of it if
4 need be, that is that if Mr. Kudryn does satisfactorily
5 in custody, and I have every anticipation that he will,
6 that I would look favorably on a motion similar to what
7 was entered last fall to allow for the travel in the
8 event that the parties aren't able to agree, but I would
9 like to see the status of things at that time.

10 But I will say likely to be granted assuming
11 things remain in their current state as anticipated.

12 Anything further, Mr. Alexander?

13 MR. ALEXANDER: Your Honor, only --

14 THE COURT: There is the forfeiture. You did a
15 preliminary order, so if you can submit a proposed final
16 order and we'll get that done. I believe I saw a
17 preliminary one in the file a while back.

18 MR. ALEXANDER: I believe so, Your Honor. I
19 would just ask the Court order forfeited the 586,000 --

20 THE COURT: I previously ordered it and I will
21 again enter a final order of forfeiture with regard to
22 the funds that were at the bank. It's \$586,000 and
23 what?

24 MR. ALEXANDER: \$748.22, Your Honor, seized in
25 matter 3:18-mj-364-DMS.

1 THE COURT: But the order of forfeiture that I
2 did was in this case.

3 MR. ALEXANDER: I think that's right, Your
4 Honor.

5 MR. WELLS: It incorporated it, right?

6 MR. ALEXANDER: The Court can criminally
7 forfeit those funds that were seized.

8 MR. WELLS: It was part of the plea agreement.
9 It incorporated by reference.

10 THE COURT: The preliminary order was entered a
11 year ago in this case on August 29th, so, yes, final
12 order we can do here as well.

13 Mr. Kudryn, when you came to court and pled
14 guilty, you waived your right to appeal so long as the
15 sentence was within the range authorized by Congress,
16 which since the maximum sentence for this particular
17 crime is 20 years, is clearly within that range, so any
18 questions or concerns about that?

19 THE DEFENDANT: No, no questions, Your Honor.

20 THE COURT: Mr. Kudryn, I read a lot of
21 presentence reports, and this was a very long one. And
22 I reflect often on the fact that, just as Mr. Alexander
23 said, nobody is saying that you're a bad person, and I
24 can only assume by the family support you have here and
25 what else is in the PSR that there is some very positive

1 thing that you have done and I hope you continue down
2 that path in the future. Good luck in that regard.

3 MR. ALEXANDER: Mr. Kudryn pled guilty to Count
4 1, which was the conspiracy to commit wire fraud, so the
5 maximum, I was just about to pipe up anyway, would be
6 five years, not the 20.

7 THE COURT: On Count 1. All right.

8 MR. ALEXANDER: I apologize, Your Honor, Count
9 2 is dismissed.

10 THE COURT: Thank you, Madam Clerk.

11 DEPUTY CLERK: All rise. This court now stands
12 adjourned.

13 (Proceedings concluded at 5:23 p.m.)

14

15 CERTIFICATE

16 I, Sonja L. Reeves, Federal Official Court Reporter
17 in and for the United States District Court of the
18 District of Alaska, do hereby certify that the foregoing
19 transcript is a true and accurate transcript from the
20 original stenographic record in the above-entitled
21 matter and that the transcript page format is in
22 conformance with the regulations of the Judicial
23 Conference of the United States.

24 Dated this 28th day of October, 2019.

25

 /s/ Sonja L. Reeves
SONJA L. REEVES, RMR-CRR
FEDERAL OFFICIAL COURT REPORTER